

SUMTER COUNTY BOARD OF COMMISSIONERS
EXECUTIVE SUMMARY

SUBJECT: Road and Fire Impact Fee Protest – Mr. Peter Baker – Lot 291 Florida Grande Motor Coach Resort – 5:00 p.m. Hearing (Staff recommends Option 1).

REQUESTED ACTION: Approve Option 1 – Uphold imposition of road impact fee (\$346.56) and fire impact fee (\$397.14).

☐ Work Session (Report Only)

☒ Regular Meeting

DATE OF MEETING: 4/27/2010

☐ Special Meeting

CONTRACT: ☒ N/A

Effective Date: _____

Managing Division / Dept: _____

Vendor/Entity: _____

Termination Date: _____

Planning

BUDGET IMPACT:

☐ Annual

☐ Capital

☒ N/A

FUNDING SOURCE: _____

EXPENDITURE ACCOUNT: _____

HISTORY/FACTS/ISSUES:

On March 15, 2010, the County received a request from Mr. Peter Baker for a review hearing with the Board regarding the imposition of County road and fire impact fees for the lot his owns in the Florida Grande Motor Coach Resort (Lot 291) located in the City of Center Hill. Mr. Baker request the Board rescind the request for payment of the road impact fee and fire impact fee. This request is made pursuant to Section 20-47 of the County's Road Impact Fee Ordinance.

Mr. Baker owns a recreational vehicle lot within the Florida Grande Motor Coach Resort that contains an accessory living unit (Grande Suite). Pursuant to the impact fee agreement between the County and Florida Grande Motor Coach Resort, Inc., dated December 8, 2009, the County sent a bill to Mr. Baker for payment of the county road impact fee (\$346.56) and county fire impact fee (\$397.14) for a total of \$743.70. The county road and fire impact fees were not paid upon the original development of the recreational vehicle lot or the Grande Suite. The County's impact fee ordinances provide that the obligation for the payment of impact fees run with the land and is the responsibility of the current owner (Mr. Baker).

On April 20, 2010, Mr. Baker submitted additional material in support of his position that the responsibility of the payment of the road and fire impact fees should not be his but be the responsibility of the developer. The County's impact fee ordinances are clear that the obligation for the payment of the impact fee runs with the land. Therefore, if an applicable impact fee is not paid by the original developer the obligation for payment is not extinguished but continues with the new property owner.

As of April 19, 2010, over 70% of the requests for impact fee payment to other property owners within Florida Grande Motor Coach Resort have been either paid or the property owner agreed to the imposition of a lien to defer payment until the recreational vehicle lot is developed.

Consistent with the County's impact fee ordinances, the Board has the following options:

1. Uphold the imposition of the road impact fee (\$346.56) and fire impact fee (\$397.14);
 2. Rescind the imposition of the road impact fee and fire impact fee; or
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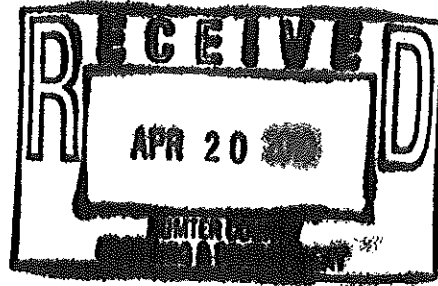
3. Authorize alternative collection method of road impact fee and fire impact fee.

Staff recommends that the Board approve Option 1 and uphold the imposition of the road impact fee (\$346.56) and fire impact fee (\$397.14).

Mr. Baker is not able to attend the hearing on April 27, 2010. Mr. Baker agreed for the hearing to proceed on April 27, 2010.

April 20, 2010

Board of Sumter County Commissioners
Impact Fees and Assessment Programs
910 N Main Street
Ste. 305
Bushnell, FL 33513



RE: Florida Grande Motor Coach Resort Impact Fees

Dear County Commissioners:

I was looking forward to addressing you in person regarding this matter, unfortunately, I will not be able to attend the hearing as I will be in Fort Lauderdale attending a military reunion. Please accept this letter in support of my position.

I am enclosing a summary of the Florida Third District Appeals Court "City of Key West v. R.L.J.S. Corporation" filed January 3, 1989. This case illustrates the builder filed against the City Of Key West as he had the units sold and therefore could not pass the Impact Fee on to the prospective buyers, even if the impact fee ordinance was enacted after the building permits were issued and before the builder was denied a certificate of occupancy.

This same situation occurred with the Florida Grande Impact Fees, with the exception the fee ordinance was already in place both when the building permits and the certificate of occupancy were issued.. These fees were due when the permits were issued and the responsibility for payment of these fees rests with the developer and the builder.

I am also enclosing two e-mails, one from the developer and one from the builder which show that negotiations between with the County Commissioners, The Florida Grande Motor Coach Resort and The Grande Suites Corporation **resulted in the return of the impact fee posted by the Florida Grande and the commissioners agreeing to bill each property owner, thereby abrogating all existing contracts.**

I sincerely hope you carefully consider this request to rescind the Impact Fee invoice addressed to me and send it to those parties responsible for the payment when permits were issued.

Thank you for your attention to this matter.

Sincerely,

Peter E. Baker
5 Marina Drive
Lake Ariel, PA 18436
Phone (570) 947-9100

CITY OF KEY WEST v. R.L.J.S. CORPORATION

1. 537 So. 2d 641; 1989 Fla. App.

Court of Appeal of Florida, Third District

January 3, 1989, Filed

SUBSEQUENT HISTORY: Rehearing Denied February 15, 1989; Review Denied May 12, 1989.

PRIOR HISTORY: An Appeal from the Circuit Court for Monroe County, M. Ignatius Lester, Judge.

OPINION BY: PEARSON

We address a question of first impression in this state, namely, does a municipality's assessment of developmental impact fees upon the developer of a condominium apartment building violate any constitutionally protected right of the developers where such fees are assessed after a building permit has been issued and the developers have sold a substantial number of the building units? We conclude that no constitutional right of the developers was offended by the municipality's action and reverse the trial court's contrary declaration.

I. R.L.J.S., et al., the plaintiffs in the declaratory judgment action below, are joint venture developers of the 1800 Atlantic Condominium in Key West. In August 1981, the City of Key West approved the developers' community impact statement and site plan. Several months later, the City issued a building permit for 76 units, all of which had been sold. In October 1983, the developers obtained a building permit for 92 additional units, some 40 of which were already sold. The developers paid \$ 19,400 in sewer connection and permit fees when they obtained this second permit.

In the spring of 1984, the City issued certificates of occupancy for the first 76 units. Thereafter, during a one-year period beginning in late 1984, the City enacted ordinances imposing separate impact fees for sewers, solid waste, and traffic. As the trial court correctly observed, the purpose of these ordinances was "to allocate to new residents of the City 'a fair share of the cost of new public facilities', specifically those . . . dealing with sewer and solid waste treatment and those capital improvements necessitated by increased traffic on account of new development in the City." Each of the ordinances provided that "no certificate of occupancy shall be issued" until any applicable impact fee was paid. Accordingly, upon the developers' failure to pay the three impact fees, the City denied their request that certificates of occupancy be issued for the additional 92 units in the develop-ment.

II. The developers filed a declaratory judgment action against the City. The trial court, convinced by *Contractors and Building Association v. City of Dunedin*, 329 So.2d 314 (Fla. 1976), that "an opportunity to pass on such fees to the ultimate user who causes the impact on the community is necessary for the law to meet constitutional muster," entered summary judgment for the developers on the grounds, first, that the developers were not afforded such an opportunity and, second, that the City attempted to retrospectively apply the fees after the developers' rights in the

building permit had vested. In the trial court's words:

The timing in this case is particularly significant to the Court in that it makes virtually impossible any chance of the developer citizen being able to pass on the impact fee. Because the Plaintiffs' rights in their building permit had already vested, Key West could not retrospectively impose fees that amount to a personal punishment to him. Such interference with the Plaintiffs' vested rights to complete construction in accordance with the terms of the building permits, constitute [sic] a due process violation and are [sic] therefore unconstitutional.

The City took this appeal.

III. We disagree with the developers and the trial court that the Dunedin case holds that an impact fee is constitutional only when the developer is given the opportunity to pass the fee on to new residents, that is, the purchasers of the developed units. The developers' view of Dunedin's holding is apparently drawn from several unconnected passages in the opinion:

In principle, however, we see nothing wrong with transferring to the new user of a municipally owned water or sewer system a fair share of the costs new use of the system involves. . . .

The avowed purpose of the ordinance in the present case is to raise money in order to expand the water and sewage systems, so as to meet the increased demand which additional connections to the system create. The municipality seeks to shift to the user expenses incurred on his account. . . .

The cost of new facilities should be borne by new users to the extent new use requires new facilities, but only to that extent.

Contractors and Builders Association v. City of Dunedin, 329 So.2d at 317-18, 318, 321 (emphasis in original).

We reject the developer's argument that the "user" or "new user" referred to in Dunedin variously as the person who is to share the costs involved in the new use of the system, the person to whom these expenses are to be shifted, or the person who is to bear the expenses of the new facilities, is necessarily the person who purchases the condominium unit from the developer and lives in the unit. While we agree that the purchasers of and residents in the condominium unit are likely users of the area's transportation, sewer, and solid waste services, they are not exclusively so. Thus, in our view, the term "user" encompasses anyone who may derive benefit from the services, as, for example, a developer seeking to sell condominium units.

Nor can the later statement in Dunedin that "[t]he cost of new facilities should be borne by new users" be read, as the developers suggest, to mean that only those persons who actually use the services must pay for them. Plainly, the statement was not intended as a sweeping declaration that taxpayers who own property in the impacted area but do not actually use new facilities are to be relieved from the burden of paying an impact fee established by an ordinance. Instead, we believe that the proper reading of the Dunedin statements is that as between all of the taxpayers of the municipality and the specific group of taxpayers in the impacted area, the latter group was to bear the cost of the required new facilities, and that no distinction is to be drawn between the developer of the property and the ultimate purchasers of units from the developer. Dunedin, then,

does little to further our inquiry.

IV. But Dunedin aside, the developers claim that the doctrine of vested rights which protects property owners and builders who rely on an act or omission by the government protects them from the impact of the impact fees.

Generally, the doctrine of vested rights limits local governments in the exercise of their zoning powers when a property owner relying in good faith upon some act or omission of the government has substantially changed position or incurred such excessive obligations and expenses that it would be highly inequitable and unjust to destroy the rights that the owner has acquired. *Hollywood Beach Hotel Co. v. City of Hollywood*, 329 So.2d 10, 15 (Fla. 1976); *City of Lauderdale Lakes v. Corn*, 427 So.2d 239, 243 (Fla. 4th DCA 1983); *Smith v. City of Clearwater*, 383 So.2d 681 (Fla. 2d DCA 1980), review dismissed, 403 So.2d 407 (Fla. 1981). The developers say the doctrine protects them because after receiving the building permit, they reasonably believed that they knew of all the expenses that they would have to pay, and in reliance on this set prices for the units. They claim that the City's subsequent assessment of impact fees after the units were sold retroactively denied them the force and effect of the building permit.

The question thus presented has no easy answer; courts of other jurisdictions which have considered similar claims by developers have not been in agreement.

A. In *City of Pontiac v. Mason*, 50 Ill. App.3d 102, 365 N.E.2d 145 (1977), the developer received building and plumbing permits for its shopping center, and the center was connected to city sewage lines. Thereafter, the city enacted an ordinance imposing a sewage connection fee, and refused to issue a certificate of occupancy until the developer paid the fee. The appellate court upheld the fee, finding that estoppel was not established and that, since the ordinance was passed before the shopping center was finished, the ordinance authorizing the fee did not violate the developers' rights. *City of Pontiac* differs from the present case in one crucial respect: the project in that case was a shopping center--its units presumably to be rented, not sold--and there was no indication--and, apparently, no argument--that it would have been difficult, much less impossible, for the developer to recoup some, or a large part, or all of the connection fee.

Likewise, in *Westfield-Palos Verdes Co. v. City of Rancho Palos Verdes*, 73 Cal.App.3d 486, 141 Cal.Rptr. 36 (1977), an environmental excise tax imposed by the city after the developer had begun construction of condominiums was upheld and the developers' vested rights argument rejected:

Appellants' attempt to use a vested rights principle to gain immunity from unforeseen taxes is virtually without precedent, and if followed to its logical conclusions, would shield any lawful business from newly enacted taxes if that business had made any sort of irrevocable commitments, either financial or contractual, in commencing operations in that municipality. The imposition of a new tax, or the increase in the rate of an old one, is simply one of the usual hazards of the business enterprise. 73 Cal.App.3d at , 141 Cal.Rptr. at 42 (citations omitted).

Once again, there is concededly a crucial difference from the present case: under the California ordinance, the units that were already sold were exempted from the developer's assessed taxes. *Id.* at , 141 Cal.Rptr. at 39.

A different California court considered a similar issue in *People v. H & H Properties*, 154 Cal.App.3d 894, 201 Cal.Rptr. 687 (1984). There, a company purchased two apartment buildings and later received city approval to convert them into condominiums. Still later, the city passed an ordinance requiring those converting rental apartments into condominiums to help their displaced tenants find comparable housing and pay either moving expenses or compensation for anticipated rent increases. The appellate court held that the ordinance did not abridge any vested right of the company because the company was merely required to pay some money and was not prevented from proceeding with the condominium conversion. The court explained that "[i]f the project has lost its attractiveness, the developers are free to pull out, and they always retain the option of holding on to the units and leasing them out." 154 Cal.App.3d at , 201 Cal.Rptr. at 691. Because the developers in the present case could not pull out (most of the units having already been sold), *H & H Properties* is of little precedential value in resolving the claim before us.

B. More on point is *Russ Building Partnership v. City and County of San Francisco*, 188 Cal.App.3d 977, 234 Cal.Rptr. 1 (Ct. App.), review granted, 236 Cal.Rptr. 403, 735 P.2d 444, review modified, 237 Cal.Rptr. 456, 737 P.2d 359 (1987), affirmed in part and reversed in part, 44 Cal.App.3d 839, 244 Cal.Rptr. 682, 750 P.2d 324 (Cal. 1988), appeal dismissed, 484 U.S. 909, 108 S.Ct. 253, 98 L.Ed.2d 211 (1987) and U.S., 109 S.Ct. 209, L.Ed.2d (1988).

In *Russ*, the plaintiff received a permit to erect an office building in San Francisco. After construction had begun, the city enacted an ordinance which provided that owners of downtown buildings containing newly developed office space could not receive a certificate of occupancy until they paid a transit impact fee. Beginning the long journey through the courts, the *Russ Building Partnership* sought a judgment declaring the ordinance invalid. The trial court found that the ordinance was a debatably rational development fee and that its "retroactive" application to *Russ* was lawful. Disagreeing, the court of appeal found that the fee could not be applied against the plaintiff since it had "obtained a vested right to complete the buildings and occupy them under the conditions in existence when the original building permits issued." 188 Cal.App.3d at , 234 Cal.Rptr. at 9. The California Supreme Court granted review and, although ordering that there be omitted from the court of appeal decision the discussion of vested rights, nonetheless went on to make clear that it agreed with the court of appeal on the general vested rights question:

Plaintiffs had been issued building permits, had begun construction, and had made a substantial financial commitment to their projects almost two years before the City enacted the TIDF ordinance. Thus, they had a vested right to complete the buildings and occupy them under the conditions contained in the permits. It is clear that if the resolutions authorizing plaintiffs' building permits did not contain the transit mitigation condition, application of the later-enacted TIDF ordinance to plaintiffs would impair their vested rights and violate due process. However, if the TIDF falls among the funding mechanisms contemplated by the resolutions, the application of the ordinance to plaintiffs is proper. 44 Cal.App.3d at , 244 Cal.Rptr. at 685, 750 P.2d at 327 (citations omitted).

Clearly, if we were to apply the law of *Russ* to the facts of the present case, the impact fees could not be assessed against the developers, because no provision allowing the assessment of fees was included in the building permit. However, we decline to follow *Russ* as we do not believe that

a requisite to the validity of an impact fee is that the possibility that it will be imposed at some future time be made an express condition of a building permit.

C. The usual vested right claim involves a change of mind, a broken promise: a city issues a building permit imposing one requirement and in the course of construction imposes a different requirement. In a sense, the building permit assures the builder that he may go forward and build in accordance with the approved plans. When a new building requirement is thereafter imposed, it can be readily said that the city had changed its mind and that the rights vested in the builder by virtue of the permit have been unfairly disturbed.

But a building permit, although assuring its possessor that he may safely rely on it and build in accordance with the approved plans, provides no assurance to the possessor that a taxing authority of the very same government will not increase taxes on the property being built upon, or, as in the present case, impose fees for certain municipal services which will be especially required when the building is completed.

Illustrative of this point is *State v. Oyster Bay Estates, Inc.*, 384 So.2d 891 (Fla. 1st DCA 1980). There the developer received a dredging permit from the Board of Trustees of the Internal Improvement Fund. Later, the Legislature passed a law enabling the Department of Environmental Regulation to impose further restrictions on development. The First District held that the developer derived no vested rights from the first permit. Since the Trustees' authority was limited to certain areas, nothing they did could guarantee that the Department of Environmental Regulation, which had authority to regulate different matters, would not impose any additional requirements. Said the court,

We therefore find no basis upon which it can be concluded that action by the Board in approving the navigational channel (a matter within its jurisdiction), conferred rights upon [the developer] with respect to construction of inland canals upon [the developer's] upland property (over which the Board had no jurisdiction). 384 So.2d at 893.

In our view, there is likewise no basis to conclude that the action of the building department of the City in approving building plans and issuing a permit (a matter within the department's jurisdiction) conferred any right upon the developer to expect that the legislative arm of the City -- its council -- would not enact an ordinance imposing impact fees where warranted.

Moreover, notwithstanding the developers' apparent belief, a law enacted during work in progress or when work is complete is not vitiated by the invocation of the word "retroactive." A law is not constitutionally infirm merely because the person affected is unable to divert the effects of the law to another or, here, to pass along the unanticipated costs that result from the law. Indeed, a long series of United States Supreme Court cases has upheld laws which operated retroactively.

The leading modern case is *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 96 S.Ct. 2882, 49 L.Ed.2d 752 (1976). In *Usery*, a coal mining company challenged a law which required it to pay benefits to miners who left the company's employ before the effective date of the law. The Court clearly stated that government may impose burdens that are unanticipated:

[I]t may be that the liability imposed by the Act for disabilities suffered by former employees

was not anticipated at the time of actual employment. But our cases are clear that legislation readjusting rights and burdens is not unlawful solely because it upsets other-wise settled expectations. 428 U.S. at 16, 96 S.Ct. at 2892-93, 49 L.Ed.2d at 766-67 (footnote omitted).

In *Usery*, the mining company argued that competitive forces would prevent it from effectively passing on to the consumer the costs imposed by the law. The Court, however, stated that it was "for Congress to choose" who should bear the burden of the miners' disabilities. "It is enough to say that the Act approaches the problem of cost spreading rationally; whether a broader cost-spreading scheme would have been wiser or more practical under the circumstances is not a question of constitutional dimension." 428 U.S. at 19, 96 S.Ct. at 2894, 49 L.Ed.2d at 768. Similarly, in *Pension Benefit Guaranty Corp. v. R.A. Gray & Co.*, 467 U.S. 717, 104 S.Ct. 2709, 81 L.Ed.2d 601 (1984), the Court rejected a challenge to a federal law which regulated employer withdrawals from the company's pension plan during the five months prior to the enactment of the statute. The Court dismissed the employer's claim that retroactive legislation does not satisfy due process requirements unless employers have "an opportunity to conform their conduct to the requirements of [the] new legislation." 467 U.S. at 731, 104 S.Ct. at 2719, 81 L.Ed.2d at 612 (quoting brief of employer). See also *United States v. Darusmont*, 449 U.S. 292, 101 S.Ct. 549, 66 L.Ed.2d 513 (1981) (upholding retroactive application of taxes); *Welch v. Henry*, 305 U.S. 134, 59 S.Ct. 121, 83 L.Ed. 87 (1938) (same).

Just as forceful are cases in which the buyer, not the seller, was compelled to pay an unexpected special assessment. In *Moody v. City of Vero Beach*, 203 So.2d 345 (Fla. 4th DCA 1967), the buyers bought a piece of property, and later learned of a special assessment for improvements performed before they bought the property. The Fourth District upheld the assessment against the buyers, saying that "[p]ublic works must be paid for even though they were constructed before any assessment was levied on their account." 203 So.2d at 347. See also *Phillip Wagner, Inc. v. Leser*, 239 U.S. 207, 36 S.Ct. 66, 60 L.Ed. 230 (1915) (special assessment not unconstitutional because for special benefits long since accrued); *Anderson v. City of Ocala*, 83 Fla. 344, 357-58, 91 So. 182, 187 (1922) ("[A]n assessment for benefits derived from improvements previously made does not constitute a deprivation of property without due process of law"); *Hall v. Street Commissioners*, 177 Mass. 434, 59 N.E. 68 (1901) (Holmes, C.J.); 70A Am.Jur. Special or Local Assessments § 13, at 1137 (1987) ("A special assessment may be levied upon an executed consideration, that is, for a public work or improvement already done; such an assessment interferes with no contract and divests no vested rights.").

It thus clearly appears that government can constitutionally impose burdens which are unexpected whether or not the burdens are susceptible to being passed on to another person. See *Westfield - Palos Verdes Co. v. City of Rancho Palos Verdes*, 73 Cal.App.3d at 494, 141 Cal.Rptr. at 42 ("The imposition of a new tax, or an increase in the rate of an old one, is simply one of the usual hazards of the business enterprise."); *John McShain, Inc. v. District of Columbia*, 205 F.2d 882, 883 (D.C. Cir. 1953) (same). Even if the developers in this case could show that the costs could not be passed on to what they call "users," they would still be liable to pay the impact fees.

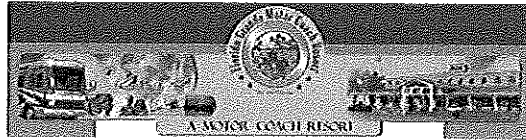
V. We acknowledge that the result we reach may seem harsh. To be sure, the developers sold most of the units in the condominium and only later found out that they had to pay more money to the City. But as we have said, absent a contractual agreement, one may not justifiably assume

that taxes will remain the same or that an impact fee will not be imposed. The imposition of an impact fee resulting in an unanticipated increase in a developer's cost may seem harsh, but it is not unconstitutional.

The fees collected must be earmarked for the substantial benefit of the residents, *Hollywood, Inc. v. Broward County*, 431 So.2d at 606, and may not exceed a pro rata share of reasonably anticipated costs of expansion. The money collected may be used only to meet the costs of expansion. *Contractors and Builders Association v. City of Dunedin*, 329 So.2d 314, 320 (Fla. 1976). See also *Home Builders and Contractors Association v. Board of County Commissioners*, 446 So.2d 140, 143-44 (Fla. 4th DCA 1983). Additionally, developers can try to avoid the problem of unanticipated fees. Real estate transaction reference books warn about the need to plan for unexpected special assessments. One leading book on Florida real estate law instructs "[t]hat to avoid dispute, many contracts include a term which specifies which party shall be responsible for the payment of the assessment." 1 R. Boyer, *Florida Real Estate Transactions* § 4.28, at 4-72 (1988). See also A. Arnold, J. Douglas, & D. Feld, *Modern Real Estate and Mortgage Forms* § 30 (1986); S. Goldberg, *Sales of Real Property* 387-91 (1971).

The judgment under review is reversed and the cause remanded with directions to enter judgment for the City of Key West in accordance with this opinion.

Reversed and remanded.



December 13, 2009

Message to Deeded Lot Owners **Sumter County Impact Fees**

The "impact fee" issue is on everyone's mind. A brief history of how we got here is in order. Property was purchased in Sumter County. When the then developer went to the County, he was informed that Sumter County's ordinances did not recognize deeded RV parks. The process then began to annex from the County into the City of Center Hill. At that time, a developer agreement was formed between Florida Grande and the City of Center Hill that included a \$200 "convenience fee". This is on each of your closing statements as an "impact fee". Impact fees are collected in many states and are used to improve the infrastructure to accommodate the impact with a larger population. Impact fees follow the land and whether collected upon permitting or closing is charged directly or indirectly to the lot owner. Center Hill only collected their fee and did not collect the fee for the County.

On October 1, 2009 the city of Center Hill discontinued building inspections and outsourced all activities to the County on behalf of the City. Coincidentally, Florida Grande was about to pull its permit to resume the clubhouse work.

When our contractor made application for the permit, the county advised Florida Grande that impact fees were due under the county ordinance of \$571 for all 499 lots on the resort (\$284,929) This caught us by surprise; we were not expecting this and certainly had not budgeted for this in our clubhouse budget.

We immediately began a dialogue with the county, explaining our tight budget and timeline and managed to get on the schedule at the county commission meeting last month. **We made an offer to have new owners pay the current ordinance amount of \$571 going forward and asked that the County grandfather the existing lot owners and waive these fees. The County rejected this proposal.** We then made an agreement with the County to pay \$75,000 under protest in order to have our permits issued and reserved our rights to fight the impact fee issue. This was agreed by the commission and we received our permits. This was necessary to start the clubhouse and meet our deadlines with creditors.

What We Did Next

We hired special legal counsel to advise us on the matter. The issues we considered were:

- The developer agreement with Center Hill, shouldn't this serve as our final deal and the county must honor our agreement?

Center Hill clerk represented that she did not know county fees were not paid. She thought all fees were paid and thought a receipt from the county was presented to the old building inspector.

- Our \$200 payments to Center Hill were an impact fee and the county is judicially estopped from collecting additional fees.

City took the position they had no responsibility for county fees.

- The bankruptcy process barred any old claims

The liability for these types of fees run with the land and the automatic stay is not effective against such claims.

- The title company is responsible for not assuring a clear deed

The title policy exceptions include municipal fees

- The passage of time has caused the county to waive their rights

As a government agency, any mistakes cannot result in the enrichment of the favored party; likewise mistakes should not punish or penalize the unfavorable party. Basically the county has the right to collect these unpaid fees, since the landowners were "enriched" by the county/city's mistake.

Conclusion

After careful analysis of the Florida Grande legal position, the effect on our owners and new customers, and meeting with county officials, we agreed to a settlement where existing owners would not be assessed the current fee of \$571 but instead will be grandfathered under the old rate of \$346.56. The Florida Grande will be treated like a subdivision allowing the collection of impact fees as lots are sold instead of a lump fee when a building permit is issued. The disputed deposit by Florida Grande will be refunded, and all fees for existing lot owners will be handled directly by the county. I should note that any fees that would have been paid by Florida Grande under any scenario would have been passed on to lot owners. This proposal was approved by the county commission last Tuesday and we expect to execute the documentation early next week.

Bill Maloney
President

Pete Baker

From: <grandesuiteinc@aol.com>
To: <dammitdianne@yahoo.com>; <wilsonrg@aol.com>; <patmorff01@earthlink.net>; <jim@DCBusinesscenter.com>; <GEK12@MSN.COM>; <haughtbs@aol.com>; <moysey@earthlink.net>; <cfmarcotte@juno.com>; <stonehead@echoes.net>; <pkspier@aol.com>; <rolarmar@earthlink.net>; <USA21C@BELLSOUTH.NET>; <anitaswartz@yahoo.com>; <bojoy43@netzero.net>; <craigall@peoplepc.com>; <duanewd@aol.com>; <fred_wolf@msn.com>; <Jacksher2@yahoo.com>; <jdsowhat@aol.com>; <roznroy@aol.com>; <fessel100@gmail.com>; <foueverdream@aol.com>; <geocindy@charter.net>; <rjring@aol.com>; <cmwrx@yahoo.com>; <JBFornander@comcast.net>; <jmattingly@jlmcc.com>; <J.Comstock@direcway.com>; <ontheroad2@post.com>; <erniebettieparra@bellsouth.net>; <ekonniek@aol.com>; <mrysandy@aol.com>; <rodldj1@aol.com>; <bobbyb102000@yahoo.com>; <brown.town_USA@hotmail.com>; <EdJanBond@aol.com>; <norman_r_sparks@hud.gov>; <scott@saltuspress.com>; <ferizzi19@yahoo.com>; <nhgallup@pci2.net>; <carter100@earthlink.net>; <mikeshoftis@hotmail.com>; <SLnRL@aol.com>; <csmithgolf@aol.com>; <dddink@aol.com>; <dembarry@gmail.com>; <jecox1@charter.net>; <bounder4049@msn.com>; <edfinch@highstream.net>; <shortyberk@aol.com>; <skylady158@gmail.com>; <HMcC222@aol.com>; <jeg31@windstream.net>; <littleab3@yahoo.com>; <Laylon@Embarqmail.com>; <jonesarij@peoplepc.com>; <mglglasgow@earthlink.net>; <havacupcof@aol.com>; <kentps@aol.com>; <mmorris758@aol.com>; <lighthouse140@gmail.com>; <cathykimball@earthlink.net>; <dcallag@live.com>
Sent: Friday, December 18, 2009 8:05 PM
Subject: Impact Fees

To all Grande Suites Owners

From: Gerald McCormick

Ref. Sumter County Impact Fees

On October 1, 2009 we were informed by the city of Center Hill that they would no longer provide permitting and inspection services to Florida Grande and Grande Suites and referred us to the Sumter County Building Department.

When we attempted to buy our first permit, we were surprisingly informed that a Sumter County Impact Fee which we had no prior knowledge of must be paid on the lot as well as the Grande Suites before a permit would be issued. We have tried without success to get these fees waived.

By now you should have received information from Florida Grande whereby Sumter County will ask each deeded lot owner to pay a Road Impact Fee of \$346.50.

We are now informed that Sumter County will ask each owner of a previously built Grande Suite to pay a Fire Impact Fee of **\$397.12**.

I hope you understand that at the time your Grande Suite was permitted and built, we paid all fees that we were requested to pay and had we known about the Sumter County fees, **they would have been added to your cost at that time.**

You should also know that Florida Grande, Grande Suites and HKH Building Manufacturing worked very hard without success to get these fees waived.

We felt it was important that we provide you with this information prior to any notice that you might receive from Sumter County.

Thanks

Gerald McCormick - President

12/19/2009

Grande Suites Inc.
Post Office Box 179
Webster, Florida 33597
256-426-3402
grandesuiteinc@aol.com

March 15, 2010

Board of Sumter County Commissioners
Impact Fees and Assessment Programs
910 N. Main Street
Ste. 305
Bushnell, FL 33513

Re: Florida Grande Motor Coach Resort Impact Fees.

PIN Q32A291

Dear County Commissioners:

I am in receipt of an invoice "Notice of Impact Fees Due" in the amount of \$743.70 for outstanding impact fees on the above listed property. The invoice lists a road impact fee of \$346.56 for the property and a fire impact fee of \$397.14 for the building.

Background - Road Impact Fee: My lot #291, located in the Florida Grande Motor Coach Resort closed title on February 13, 2007 and the purchase price, closing fees, taxes and adjustments were paid in full. Obviously, the road impact fee was due prior to the closing and was the responsibility of the Florida Grande Motor Coach Resort. The contract does not address the issue of unanticipated fees, nor does it specify which party is responsible for payment of such fees. Normally, impact fees are paid by the developer/builder upon permit application and prior to the closing of title.

NOW: Over three years later this notice of impact fees, that were due over three years ago, has been passed on to the unsuspecting lot owner by an agreement between the Sumter County Board of Commissioners and the developer, who is now relieved of paying this fee. One finds it hard to understand how the developer can negotiate with the County Commissioners to relieve themselves of their payment obligation and place it on the lot owners, who were not even represented.

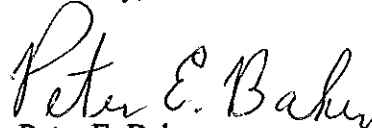
Background - Fire Impact Fee: Subsequent to the closing of title on Lot 291, a contract with Grande Suites Inc. was entered into to place a 12 X 32 Feet Building on lot 291 at a total cost of \$17,900. The \$9,000 required deposit was mailed on January 27, 2006 and acknowledged in a purchase agreement signed by Gerald McCormick, President of Grande Suites Inc. The building was erected on lot 291 and completed on February 12, 2008. The final payment of \$8,900 was made on March 10, 2008 and a receipt was signed by Gerald McCormick acknowledging the building was "paid in full."

NOW: Again, over two years later the "Notice of Impact Fees Due" arrives from Sumter County for \$397.14 for a fire impact fee. This fee was due prior to or at the time the building permit was issued and should have been by paid Grande Suites Inc. Somehow, the Sumter County Commissioners abrogated the contract between Grande Suites Inc. and myself by adding this fee to a pre-existing contract by relieving Grande Suites of their Fire Impact Fee obligation and shifting the payment responsibility to the lot owner.

I am not disputing the Impact Fees as they appear to meet the specific criteria required for impact fee statues, but I am disputing when these fees were due and who should be responsible for payment. I just do not believe that someone has the authority to negotiate themselves out of a payment obligation by shifting the obligation to others.

In conclusion, I request the Sumter County Commissioners rescind this "Notice of Impact Fees Due" and resend it to the parties who were responsible for payment when the fees were due. The road impact fee bill should be sent to the Florida Grande Motor Coach Resort and the Fire Impact Fee should be sent to Grande Suites Inc. as they were the responsible parties at the time these fees were due. Absent this invoice redirection, I must request the County Commissioners provide their authority to enforce payment of these fees from the present lot owners, again without any representation, years after they were actually due by other parties.

Sincerely;

A handwritten signature in cursive script that reads "Peter E. Baker".

Peter E. Baker

5 Marina Drive

Lake Ariel, PA 18436

Phone (570) 947-9100